

ENTERED

February 28, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISIONORLANDO CRUZ JR., *et al*,

Plaintiffs,

VS.

JPMORGAN CHASE BANK, N.A., *et al*,

Defendants.

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CIVIL ACTION NO. 7:18-CV-00001

ORDER

The Court now considers Orlando and Yvonne Cruz's ("Plaintiffs") motion for leave to amend to abandon all federal claims and to remand,¹ as well as JP Morgan Chase's ("Defendant") response.² Plaintiffs' request is **DENIED AS MOOT** because all of Plaintiffs' claims—including their federal claims—were recently dismissed with prejudice.³ Claims that no longer exist cannot be abandoned. Even so, this Court's jurisdiction is based upon diversity,⁴ not federal question.

Similarly, the coordinate request for remand is **DENIED AS MOOT** because there is nothing to remand: all of Plaintiffs' claims have been dismissed with prejudice. Plaintiffs also file a motion for extension of time to file the aforementioned motion for leave to amend to abandon all federal claims and remand.⁵ This requested relief is **DENIED AS MOOT** because the aforementioned motion is moot.

Moreover, Plaintiffs request an extension of time to respond to Defendant's dismissal motion.⁶ Indeed, Plaintiffs failed to timely respond to the motion. Nevertheless, this request is **DENIED AS MOOT** because the Court has already rule on Defendant's motion. Even so, Plaintiffs have asked for an extension *after* the deadline in question. Federal Rule 6(b) provides that an extension should only be granted in these circumstances if the movant explains why his

¹ Dkt. No. 11.

² Dkt. No. 16.

³ Dkt. No. 10.

⁴ See Dkt. No. 1, p. 2.

⁵ Dkt. No. 12 p. 1.

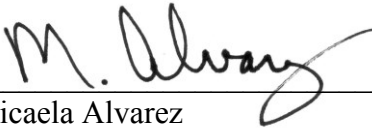
⁶ *Id.* pp. 2–3.

neglect was excusable. Here, Plaintiffs' counsel supplies his neglect (*i.e.*, failure to calendar the event),⁷ but fails to explain why this neglect was *excusable*. Plaintiffs' counsel also suggests an extension is justified because he may be replaced as attorney in charge.⁸ However, Plaintiffs' counsel has not requested substitution, the Court has not granted it, and the prospect of leaving a case is no excuse for being lazy or otherwise careless.

Finally, Plaintiffs "advise" the Court that the parties are in serious settlement negotiations.⁹ This advisory is both unbelievable (Defendants have won; why would they settle?) and directly negated by Defendants' response, which indicates the parties are not discussing settlement.¹⁰ For all these reasons, Plaintiffs' requested relief is **DENIED**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 28th day of February, 2018.



Micaela Alvarez
United States District Judge

⁷ *Id.* p. 4.

⁸ *Id.* p. 2.

⁹ *See* Dkt. No. 14.

¹⁰ *See* Dkt. No. 15.